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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 160301165-6692-02]**

**RIN 0648-BF88**

**Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2016-2018**

**Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements catch limits, commercial quotas, and possession limits for the spiny dogfish fishery for fishing years 2016-2018. This action reduces catch limits for fishing years 2016-2018, but increases the spiny dogfish trip limit. This action is necessary to ensure that overfishing does not occur and is intended to help the spiny dogfish fishery better achieve optimum yield.

**DATES:** Effective on *[insert date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Copies of the specifications, including the Environmental Assessment and Regulatory Impact Review (EA/RIR), and other supporting documents for the action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The framework is also accessible via the Internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Fishery Policy Analyst,  
(978) 281-9182.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils through the Spiny Dogfish Fishery Management Plan (FMP). The Atlantic States Marine Fisheries Commission also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate plan. Additional information on the FMP is available at <http://www.mafmc.org/fisheries/fmp/dogfish>. Information on the interstate FMP can be reviewed at <http://www.asmfmc.org/species/spiny-dogfish>.

On June 22, 2016, we proposed new spiny dogfish specifications (81 FR 40650), which include catch limits, commercial quotas, and possession limits for fishing years 2016-2018. Additional information on how specifications are set can be reviewed through the FMP links provided above or the proposed rule for this action.

**Fishing Year 2016-2018 Specifications**

We are implementing the acceptable biological catch (ABC) and annual catch limits (ACLs) outlined in our proposed rule (see Table 1 below).

**Table 1. 2016-2018 ACL and Commercial Quota Specifications for the Spiny Dogfish Fishery**

Fishing Year	ACL (lb)	ACL (mt)	Commercial Quota (lb)	Commercial Quota (mt)	Change from 2015 (Percent)
2016	51,923,272	23,552	40,360,761	18,307	-20
2017	50,662,228	22,980	39,099,717	17,735	-23
2018	49,758,333	22,570	38,195,822	17,325	-25

Although the stock remains healthy and is not overfished or subject to overfishing, the survey index of spawning stock biomass has recently decreased. This decline was not unexpected and is primarily due to (1) high variance in the survey, and (2) poor spiny dogfish pup production (*i.e.*, recruitment to the dogfish stock). These specifications are consistent with the best scientific information available and the Council's and their Scientific and Statistical Committee recommendations. Additional information that explains the status of the spiny dogfish stock and describes the 2016-2018 catch limits is available in the proposed rule and is not repeated here.

#### *Trip Limit Increase*

We are approving a trip limit increase from 5,000 lb (2,268 kg) to 6,000 lb (2,722 kg). Because of the proposed harvest reductions (see Table 1), the Councils initially recommended maintaining the current spiny dogfish trip limit of 5,000 lb (2,268 kg). However, after recognizing that the reduced 2016-2018 quotas are still significantly higher than landings in recent years, both Councils and the Commission requested that we increase the trip limit to 6,000 lb (2,722 kg). We specifically solicited public comment on this request in the proposed rule (81 FR 40650; June 22, 2016). We received several comments in support of the trip limit increase. There were two comments opposed to a trip limit increase that provided no specific detail on why the increase would be harmful. Considering this, and understanding that the stock remains healthy, underharvested, and has in place rigid management controls to prevent exceeding the commercial quota, we have elected to increase the trip limit.

#### **Comments and Responses**

We received five public comments on the proposed rule during the 15-day comment period.

*Comment 1:* Two commenters suggested that the trip limit should be reduced to protect the stock and prevent the fishery from becoming overfished.

*Response 1:* As explained in the proposed rule, the ACLs are being reduced in response to a recent stock assessment update that shows anticipated declines in stock size following a few years of lower pup production. Despite the reduced ACLs, the fishery is not considered overfished or subject to overfishing. The FMP provides authority to close the fishery if the commercial quota will be reached as well as a pound-for-pound overage repayment system should catch in any one year exceed the established quota. Female spawning stock biomass is 6 percent above the target maximum sustainable yield biomass proxy of 351 million lb (159,288 mt). Fishing mortality remains low and the fishery is underutilized – it is not at risk of overfishing or becoming overfished. As a result, it is not necessary to reduce the trip limit to keep the fishery within its catch limits. Should the increased trip limits result in higher harvests than recent years, appropriate management tools are available to prevent overharvesting. In addition, decreasing the trip limit would make it less likely that the fishery could achieve optimum yield.

*Comment 2:* Both Councils and Massachusetts Division of Marine Fisheries requested that we increase the spiny dogfish trip limit.

*Response 2:* We agree. This healthy stock remains greatly underutilized. Increasing the trip limit provides an opportunity for the fishery to better harvest optimum yield and provide increased revenue. For these reasons, in addition to those detailed above, we are increasing the trip limit.

## **Classification**

The Administrator, Greater Atlantic Region, NMFS, determined that the 2016-2018 specifications to the FMP are necessary for the conservation and management of the spiny dogfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. Maintaining the 30-day delay in effective date is contrary to the public interest for several reasons. First, increasing the dogfish possession limit from 5,000 lb (2,268 kg) to 6,000 lb (2722 kg) will enhance fishing opportunities and the change is anticipated to increase landings and associated fishing revenue for members of the fishing industry. Therefore, this final rule relieves an economic hardship while allowing the fishery to more effectively achieve optimum yield. Delaying this action for 30 days would result in foregone economic benefits that could not be recovered. Second, the Mid-Atlantic Fishery Management Council did not submit these Specifications and the accompanying environmental assessment until March 11, 2016, making it virtually impossible to solicit public comment through a proposed rule and implement a final rule prior to the start of the fishing year, which began on May 1, 2016. Therefore, this delay has already resulted in missed fishing opportunities and revenue for fishermen and implementation should not be further delayed. Third, keeping an unnecessarily restrictive possession limit would result in fishermen wastefully discarding fish that could have been retained with the higher possession limit approved under this rule. Maintaining the lower catch limit and requiring unnecessary discarding contradicts the best available science and would prevent the fishery from achieving optimum yield. Lastly, because this rule imposes no further restrictions on the fishery that would alter existing fishing practices or require affected entities to acquire additional equipment, there is no need to delay implementation of this action to provide affected entities

additional time to prepare for or comply with the implementation of this action. For these reasons, a 30-day delay in effective date is both contrary to the public interest and unnecessary.

This final rule has been determined to be not significant for the purpose of E.O. 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments. A copy of this analysis is available (see **ADDRESSES**).

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

A description of the final rule, why it is being considered, and the legal basis for this rule were contained in the preamble of the proposed rule for this action (81 FR 40650; June 22, 2016) and are not repeated here. The public did not provide any comments on the IRFA; therefore, there are no changes made in this final rule with regards to the economic analyses and impacts.

*Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

This final rule would affect fishing vessels, including commercial fishing entities. In 2014, there were 2,473 vessels that held an open access spiny dogfish permit. Cross-referencing those permits with vessel ownership data revealed that 1,830 business entities owned those vessels.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act compliance purposes (80 FR 81194). The \$11 million standard became effective on July 1, 2016, and is to be used in

place of the U.S. Small Business Administration's (SBA) previous standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors, respectively, of the U.S. commercial fishing industry.

An IRFA was developed for this regulatory action prior to July 1, 2016, using SBA's previous size standards. Under the SBA's size standards, 18 of the 1,830 (about 1 percent) spiny dogfish fishing entities were determined to be large. Of the 1,812 entities deemed to be small business entities by the SBA criteria, 570 were finfish, 580 were shellfish, and 244 were for-hire small entities. Further, 418 small entities had no revenue in 2014.

NMFS has qualitatively reviewed the analyses prepared for this final rule using the new size standard. The new standard could result in a few more commercial shellfish businesses being considered small (due to the increase in small business size standards). In addition, the new standard could result in fewer commercial finfish businesses being considered small (due to the decrease in size standards). On average, for small entities, spiny dogfish is responsible for a small fraction of total landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery. As a result, it is unlikely that these size-standard changes would have any impact on the previously conducted analyses.

*Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Final Rule*

This final rule does not introduce any new reporting, recordkeeping, or other compliance requirements.

*Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes*

These specifications include management measure alternatives for 1) the spiny dogfish ACLs and associated commercial quotas, and 2) spiny dogfish trip limits.

We do not anticipate any significant economic impacts on small entities to result from this action. While there is an overall reduction in the ACLs, analyses for this action indicate that spiny dogfish landings have been substantially less than the specifications we are approving for fishing years 2016-2018. It is unlikely that potential revenue losses would be directly equal to with the ACL reductions. By contrast, maintaining the status quo ACL is inconsistent with the stated objectives because it does not represent the best available science or the goals and objectives of the FMP.

Regarding spiny dogfish trip limits, this final rule increases trip limits from 5,000 lb (2,268 kg) to 6,000 lb (2,722 kg). In general, higher trip limits could result in greater immediate revenue per trip. There is some risk that increasing trip limits could increase the potential for an abbreviated season if the quota or processing capacity is reached. Also, it is possible that a large trip limit increase could lower ex-vessel prices and/or make prices more unstable. Given the low overall demand for spiny dogfish, trip limits may not have a large effect on overall revenue across the fishery. Therefore, increasing the trip limit may help minimize economic impacts, but only if prices remain relatively stable and demand increases.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity



compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the compliance guide, *i.e.*, permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be posted or publically available on the GARFO website (see **ADDRESSES**).

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 9, 2016

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Paul Doremus,

Deputy Assistant Administrator for Operations,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.235, revise paragraph (a)(1) to read as follows:

#### **§ 648.235 Spiny dogfish possession and landing restrictions.**

(a) \* \* \*

(1) Possess up to 6,000 lb (2,722 kg) of spiny dogfish per trip; and

\* \* \* \*

[FR Doc. 2016-19342 Filed: 8/12/2016 8:45 am; Publication Date: 8/15/2016]